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Attorneys for Defendants State of Oregon,
Marilyn Jones, Jana McLellan, and Glenda
Marshall

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

A.S. a pseudonym,

Plaintiff,

v.

STATE OF OREGON, by and through its
Department of Human Services, RED ROCK
CANYON SCHOOL, L.L.C., a limited
liability company, RED ROCK CANYON
SCHOOL NON-PROFIT ORGANIZATION,
a foreign nonprofit; SEQUEL TSI
HOLDINGS, LLC, a foreign limited liability
company; SEQUEL YOUTH AND FAMILY
SERVICES, LLC, a foreign limited liability
company; VIVANT BEHAVIORAL
HEALTHCARE, LLC, a foreign limited
liability company; SEQUEL YOUTH
SERVICES OF RED ROCK CANYON, LLC,
a foreign limited liability company.
MARILYN JONES, in her individual and
official capacity; JANA MCLELLAN, in her
individual and official capacity; GLENDA
MARSHALL, in her individual and
professional capacity; RYAN SANTI, in his
individual and official capacity; GENA
PALM, in her individual and professional
capacity; and JOHN STUPAK, in his

Case No. 3:23-CV-01643-MO

STATE DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT AND
AFFIRMATIVE DEFENSES

DEMAND FOR JURY TRIAL

individual and official capacity; and CARE
YOUTH CORPORATION, a foreign
corporation

Defendants.

Defendants State of Oregon, by and through its Department of Human Services (DHS); Glenda Marshall; Marilyn Jones; and Jana McLellan (collectively, “State Defendants), by and through the undersigned, in response to plaintiff’s amended complaint, admit, deny, and allege as follows:

1.

Admit the allegations contained in paragraph(s) 1, 15, 16, 27, 28, 39, 41, 43, and 48.

2.

Deny the allegations contained in paragraph(s) 51, 54, 56, 80-85, and 92-96.

3.

State Defendants are without sufficient knowledge as to the truth of the allegations contained in paragraph(s) 17, 29-32, 35, 36, 40, 42, 44-47, and 49, and therefore deny the same.

4.

In response to paragraph 2, State Defendants admit that DHS is an Oregon state agency that delivers programs and services to foster children and owes certain duties to such children. DHS admits that the State is responsible for the acts or omissions of its agents, employees, and officers acting within the scope of their employment or duties, pursuant to Oregon’s Tort Claims Act, ORS 30.265 *et seq.* Otherwise, denied.

5.

Paragraphs 3-7, 11-13, 55, 57-78, and 86-90 are directed at other defendants, so no response from the State Defendants is required. To the extent a response is necessary, State

Defendants are without sufficient knowledge as to the truth of the allegations and therefore deny the same.

6.

State Defendants admit that Marilyn Jones was the DHS Child Welfare Director, Jana McLellan was the Deputy Child Welfare Director, and Glenda Marshall was a Child Protective Services program coordinator for treatment services, who were all acting within the scope of their employment and duties at all times material. State Defendants deny the remaining allegations in paragraphs 8-10.

7.

State Defendants are without sufficient knowledge as to plaintiff's expressed sexual identity as bisexual, therefore denied. Admit the remaining allegations in paragraph 14.

8.

In response to paragraph 18, State Defendants admit that DHS contracted with Care Youth Corporation, which operated Red Rock Canyon School, for the placement of plaintiff and other Oregon youth. State Defendants admit they were aware of the terms of those contracts, the contents of which speak for themselves.

9.

State Defendants admit that plaintiff has ties to Columbia County and was in DHS custody at several times, with multiple placements. Further admit that plaintiff suffers from psychological and behavioral challenges. Otherwise, deny the remaining allegations in paragraph 20.

10.

Paragraph 21 contains legal conclusions to which no response is necessary. To the extent a response is required, admit that State Defendants were acting within the scope of their employment and duties. Otherwise, denied.

11.

Paragraph 22 is directed at other defendants, so no response from the State Defendants is necessary. To the extent a response is required, denied.

12.

Paragraphs 23-26 contain legal conclusions to which no response is necessary. To the extent any response is required, denied.

13.

In response to paragraph 33, admit that Jones and McLellan communicated regarding out-of-state placements of foster children, including plaintiff, but that the contents of such communications speak for themselves. Otherwise, denied.

14.

In response to paragraph 34, admit that Marshall became aware of concerns raised by an investigation of a residential treatment facility, and communicated to Care Youth Corporation or its agents, but that the contents of such communication speak for themselves. Otherwise, denied.

15.

In response to paragraph 37, admit that communications were received and made regarding residential treatment facilities, but that the contents of such communications speak for themselves. Admit that plaintiff was not removed from Red Rock Canyon School until May 2019, otherwise denied.

16.

Paragraph 50 contains legal conclusions to which no response is necessary. To the extent a response is required, admit that the State owes certain legal duties to children in its legal custody, otherwise denied.

17.

Paragraphs 52 and 53 are directed at other defendants so no response from the State Defendants is necessary. To the extent a response is required, admit that DHS contracted with Care Youth Corporation to provide residential treatment services to youth, including plaintiff, but deny that those contracts inured any rights to plaintiff by virtue of their terms. Otherwise, denied.

18.

Admit and deny the allegations contained in paragraph(s) 63, 79, and 91 as heretofore admitted and denied.

19.

Except as expressly admitted or denied herein, State Defendants deny all remaining and every other allegation in plaintiff's complaint.

FIRST AFFIRMATIVE DEFENSE

Comparative Fault/Co-Defendants

20.

Plaintiff's injuries were caused in whole or in part by the fault or negligence of other defendants in this action.

SECOND AFFIRMATIVE DEFENSE

Comparative Fault/Plaintiff

21.

Plaintiff's injuries were caused in whole or in part by her own fault or negligence.

THIRD AFFIRMATIVE DEFENSE

Discretionary Immunity

22.

Plaintiff's state law claims for relief are based upon the State's alleged performance of/or failure to exercise or perform discretionary functions or duties.

23.

The State is immune from liability from plaintiff's state law claims pursuant to ORS 30.265(6)(c).

FOURTH AFFIRMATIVE DEFENSE

Failure to State a Claim

24.

Plaintiff's claims for relief fail to state a claim upon which relief may be granted.

FIFTH AFFIRMATIVE DEFENSE

Jurisdiction Over the Subject Matter

25.

Plaintiff's federal claims are barred for lack of subject matter jurisdiction.

SIXTH AFFIRMATIVE DEFENSE

Oregon Tort Claims Act Limitations

26.

Plaintiff's state claims are all subject to the Oregon Tort Claims Act and the procedures, limitations, and immunities contained in ORS 30.260 et seq.

SEVENTH AFFIRMATIVE DEFENSE

Qualified Immunity

27.

Plaintiff's federal claims are based upon actions of the State Defendants for which they, and each of them, are entitled to qualified immunity.

EIGHTH AFFIRMATIVE DEFENSE

No *Monell* Liability for State or Official-Capacity State Defendants

28.

The State, its agencies, and its officials sued in their official capacity are not "persons" for purposes of 42 U.S.C. § 1983 and therefore are not subject to plaintiff's *Monell* claim.

WHEREFORE, having fully answered plaintiff's complaint, State Defendants pray for a judgment in their favor against plaintiff, dismissing plaintiff's complaint in its entirety and awarding State Defendants their costs and disbursements incurred herein, and for such other and further relief as the Court may deem appropriate.

State Defendants demand a jury trial on all matters so triable.

DATED March 11, 2024.

Respectfully submitted,

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